

REMARKS

Claims 1-10 are at issue in this application, and all stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rodgers (U.S. Patent 2,881,457, hereinafter “Rodgers”). Applicants respectfully traverse the rejections of claims 1-10 and request their allowance.

Of the rejected claims, only claim 1 is an independent claim. Claim 1 recites, *inter alia*, a dock leveler comprising a movable deck with a right and a left upper plate and a plurality of lower support beams, wherein the right and left upper plates are affixed to the lower support beams. The deck also has a front edge, a rear edge, and two lateral edges, with a length that extends from the front edge to the rear edge. The deck further has a joint between the right upper plate and the left upper plate that extends longitudinally from the front edge to the rear edge of the deck, wherein the right and left upper plates are substantially stationary relative to each other. Finally, the dock leveler includes a lip extension plate coupled to the front edge and being movable relative thereto.

In support of the § 103(a) rejection of claim 1, the Office Action suggests that Rodgers discloses a dock leveler that includes a deck having a right and a left upper plate (64), a plurality of lower support beams (52, 54, 56) and a joint (shown at line 2-2 of Fig. 1) between the right and left upper plates. The Office Action concedes that the lip of Rodgers is not movable, but asserts that it is very well known in dock levelers to use a pivotally mounted lip and that it would have been obvious to one of ordinary skill in the art to use such a pivotally mounted lip in the Rodgers invention.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974); MPEP § 2143.03. Applicants respectfully submit that a case of *prima facie* obviousness of the invention claimed in 1 has not been established for the following reasons.

First, claim 1 recites that the right and left upper plates are substantially stationary relative to each other, suggesting that the deck is a sectional, but unitary deck. In

contrast, “each of the deck sections 64 [of the Rodgers leveler] is individually pivotally mounted . . . so that each deck section 64 may move with respect to any other . . . to accommodate unevenness in the truck bed or tilting of the truck bed . . .” (col. 3, lines 45-52, emphasis added). Modifying the Rodgers leveler to correspond to claim 1 (making the deck sections substantially stationary relative to each other) would render Rodgers unsatisfactory for its intended purpose of accommodating unevenness in or tilting of a truck bed. Any proposed modification required in an obviousness rejection cannot render the prior art unsatisfactory for its intended purpose or change the reference’s principle of operation (MPEP § 2143.01). Thus, not only does Rodgers fail to teach or suggest this claim limitation, but the teachings of Rodgers actually directly contradict the recitations of claim 1.

Further, as the Office Action suggests, Rodgers teaches structures that may, arguably, be considered a plurality of lower support beams, but Rodgers does not teach a plurality of lower support beams to which the right and left upper plates are affixed (as is claimed in 1). Instead, members 52 are outwardly facing side channel members that are connected to member 56, which is a tubular torque resisting member that also serves as an oil reservoir (col. 3, lines 26-31). The upper deck plates of Rodgers are not affixed to these lower support members but are actually separable therefrom. As described in the Rodgers Specification, “the deck sections or leaves 64 rest on the tubular member unless they are supported by the truck bed,” and in addition, “the side sections 64 have their lower plates lying on top of the upper flange of the channel 52” (col. 3, lines 58-64). Thus, the deck sections only rest on the purported lower support members 52 and 56 of Rodgers when the leveler is not in use, but the upper deck plates are not affixed to the lower support members. Modifying the Rodgers leveler to affix the upper plates to the purported lower support beams would, again, render the invention unsatisfactory for its intended purpose of accommodating unevenness in or tilting of a truck bed, because doing so would not allow “each deck section 64 [to] . . . move with respect to any other” (col. 3, lines 49-50, emphasis added). Also, while the deck sections of Rodgers may be pivotally mounted to the I-beam 54 (arguably within the meaning of affixed), this I-beam cannot fairly be said to constitute a plurality of lower support beams as recited in claim 1.

Finally, claim 1 recites a lip extension plate coupled to the front edge and movable relative thereto. The Office Action concedes that the lip of Rodgers is not movable, but asserts that it is very well known in dock levelers to use a pivotally mounted lip and that it would have been obvious to one of ordinary skill in the art to use such a pivotally mounted lip in the Rodgers invention. Applicants concede that movable lips on certain types of dock levelers are known in the art but respectfully submit that that alone is not sufficient to constitute a case of *prima facie* obviousness. Adding a separate pivotally mounted lip to each deck section is unrealistic because a separate control/lifting mechanism would be needed for each lip, greatly increasing the weight, size, complexity, and cost of the leveler (that is, assuming *arguendo* that one skilled in the art would have a reasonable expectation that such a modification would be successful). A more realistic modification of Rodgers would be the addition of a single lip extension plate that spans the entire front edge of a loading dock. However, making this modification would effectively “tie” the free ends of the deck sections together, in much the same way that tying Rodgers’ upper deck sections to its lower support beams would. Either modification would prohibit those deck sections from moving with respect to one another and render the leveler unsatisfactory for its intended purpose of accommodating unevenness in or tilting of a truck bed.

For the foregoing reasons, Applicants respectfully traverse the § 103(a) rejection of claim 1 in view of Rodgers. To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art, but as detailed above, Rodgers fails to do so. Claim 1 is in a condition for allowance.

Claims 2-10 depend from claim 1. As detailed above, independent claim 1 is nonobvious in view of Rodgers, and if an independent claim is nonobvious, then any claim depending therefrom is also nonobvious. In re Fine, 837 F.2d 1071, USPQ2d 1596 (Fed. Cir. 1988); MPEP § 2143.03. Thus, claims 2-10 are also in a condition for allowance.

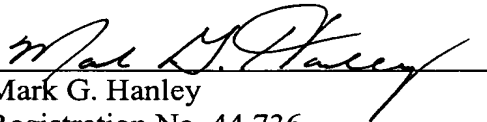
CONCLUSIONS

In view of the foregoing, Applicants respectfully request reconsideration, removal of the rejections, and allowance of claims 1-10.

Respectfully submitted,

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